

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK**

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STEVEN B. BARGER,

Plaintiff,

v.

Civil Case No. 1:17-cv-04869-FB-LB

FIRST DATA CORPORATION, *et al.*,

Defendants.

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**DEFENDANTS' MOTION FOR ADMINISTRATION OF A  
SUPPLEMENTAL JUROR QUESTIONNAIRE**

Defendants First Data Corporation, Frank Bisignano, Dan Charron, Anthony Marino, and Rhonda Johnson, by and through their undersigned counsel, respectfully move for the administration of a Supplemental Juror Questionnaire (Questionnaire) to the venire drawn for this case slated for jury trial on September 16, 2019. A copy of the proposed Questionnaire is attached as Exhibit 1.

The goal of this questionnaire is to elicit background information and attitudes that may be relevant to challenges for cause as well as the informed exercise of peremptory challenges by both parties in this matter. This questionnaire will provide both the parties and the Court with responses that may alert them to possible attitudes, relationships, associations, or experiences that may be a source of bias or prejudices and would thus necessitate for cause excusals. Finally, the questionnaire will save substantial time that can be devoted in *voir dire* to questioning about other issues. *United States v. Ashburn*, 2014 WL 5800280, at \*18 (E.D.N.Y. Nov. 7, 2014) (“[T]he court finds that utilizing a questionnaire will conserve judicial resources by saving a

substantial amount of time relative to a jury selection process in which the entire *voir dire* is conducted orally.”).

Defendants believe that a written juror questionnaire is particularly important because jurors have been found to be less candid in open court with a judge than when expressing their opinions and experiences in writing or with an attorney. *United States v. King*, 140 F.3d 76, 80 (2d Cir. 1998). Both jury scholars and judges have written about this finding. See Susan E. Jones, “Judge Versus Attorney Conducted *Voir Dire*: An Empirical Study of Juror Candor,” LAW AND HUMAN BEHAVIOR at Vol. 11, No. 2 (1987); see also Michael Dann, “Free the Jury,” 23 LITIGATION at 5 (Fall 1996). As jury expert and author, Dr. Jeffrey Frederick, summarizes,

The use of written questionnaires provides jurors with a greater sense of privacy and comfort than does answering questions in open court, in front of their fellow jurors and, often, the press. As a result, jurors are likely to be more candid in their answers to questions in supplemental juror questionnaires than to questions posed in open court, particularly when faced with group questioning. This factor is important when considering potentially sensitive topics, such as personal experiences with alcoholism, drug abuse, mental illness, and prior sexual assault.

See Jeffrey T. Frederick, Mastering *Voir Dire* and Jury Selection 122 (2011).

Defendants propose the following process for administration of the questionnaire:

1. The Questionnaire be administered to prospective jurors on September 16, 2019, the morning of jury selection;
2. That jurors be required to complete the Questionnaire under oath;
3. That copies of the completed Questionnaire be made by the parties using portable copiers brought to Court, with the original going to the Court;
4. That oral *voir dire* that is being conducted by the Court’s judicial clerks, with the assistance of counsel for the parties, occur to follow up with prospective jurors on their responses and related attitudes and experiences.

## **CONCLUSION**

For these reasons, Defendants respectfully request that the Court authorize the use of the Questionnaire with the venire.

### **SAUL EWING ARNSTEIN & LEHR LLP**

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